

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LINSON TARA,

Plaintiff,

V.

OFFICER BRENT FRANK, OFFICER MIKE BOEHMER, and the CITY OF TUKWILA, a municipal corporation,

Defendants.

No. 2:16-cv-00148 JCC

**DEFENDANTS ANSWER TO
AMENDED COMPLAINT AND
AFFIRMATIVE DEFENSES**

JURY DEMAND

Defendant, OFFICER BRENT FRANK, OFFICER MIKE BOEHMER, AND THE CITY OF TUKWILA, A MUNICIPAL CORPORATION, in answer to Linson Tara's complaint, admits, denies and alleges as follows:

I. INTRODUCTION

In response to Paragraph 1.1 Defendants admit that they arrested Plaintiff with probable cause to believe he had assaulted others, trespassed, and assaulted Officer Frank, and deny all else.

In response to Paragraph 1.2, Defendants deny the allegations.

II. PARTIES

In response to Paragraph 2.1, Defendants deny that Plaintiff is a resident of King County.

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1002-01007/221505

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1 Defendants admit Paragraph 2.2.

2 Defendants admit Paragraph 2.3.

3 Defendants admit Paragraph 2.4.

4 **III. JURISDICTION AND VENUE**

5 Defendants deny Paragraph 3.1 and 3.2 as legal conclusions.

6 **IV. SCOPE OF EMPLOYMENT AND COLOR OF LAW**

7 Defendants admit Paragraph 3.1[sic] and 3.2[sic] on page 2, lines 19-26 of the
8 Amended Complaint.

9 **V. FACTUAL ALLEGATIONS**

10 In response to Paragraph 4.1 Defendants admit they were dispatched to the location
11 of the arrest, and deny all else.

12 In response to Paragraph 4.2, Defendants admit that Tara was present at the arrest
13 location, admit he had one hand in his pocket or waistband concealed from the Officers,
14 deny that “everything” is captured on video and deny all else.

15 In response to Paragraph 4.3, Defendants admit that Officer Frank approached
16 Plaintiff and engaged with him verbally, due to his admitted crystal meth intoxication, he
17 was unable to communicate, and did not remove his hand from its concealed location, and
18 deny all else.

19 In response to Paragraph 4.4, Defendants admit that as Officer Frank escorted
20 Plaintiff he balled his hand into a fist, wheeled on Officer Frank and assaulted him by
21 attempting a “bear hug” clearly shown on the video, which forced Officer Frank to begin
22 defensive tactics towards Plaintiff, and deny all else.

23 In response to Paragraph 4.5, Defendants admit that Officer Frank verbally
24 requested that Officer Boehmer stage his Taser for use, and deny all else.

25 In response to Paragraph 4.6, Defendants admit that Officer Frank and Boehmer
26 attempted to move Plaintiff from the hood of the car to the ground for handcuffing, but he

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1 continued to active resist and assault Officer Frank, and deny all else.

2 In response to Paragraph 4.7, Defendants admit that Officer Boehmer attempted to
3 use the Taser to stop Plaintiff's fighting, admit that the Taser had no meaningful effect on
4 the intoxicated Plaintiff and deny all else.

5 In response to Paragraph 4.8, Defendants admit that Officer Frank had to flatten his
6 body onto the assaultive Plaintiff, depriving him of the leverage to fight with both fists, and
7 then rolled him onto his stomach.

8 In response to Paragraph 4.9, Defendants admit that the remoted door release for K9
9 Ace was depressed, that Ace arrived to assist, admit that K9 Ace's teeth were grazing on
10 the skin of Plaintiff, causing no punctures or tears as documented in photographs, admit that
11 Plaintiff was refusing to present his hands for cuffing and they remained under his body at
12 his waist where he previously was concealing his left hand during the original encounter,
13 further elevating the risk factors to the Officers and deny all else.

14 In response to Paragraph 4.10, Defendants admit that Plaintiff was refusing to
15 remove his hands from under his body, and it took the assistance of a third Officer to get his
16 hands out for cuffing and deny all else.

17 In response to Paragraph 4.11, Defendants admit that it is impossible to evaluate the
18 level of a person's consciousness based on a video, and deny all else.

19 In response to Paragraph 4.12, Defendants admit that it is impossible to evaluate the
20 level of a person's consciousness based on a video, and deny all else.

21 In response to Paragraph 4.13, Defendants admit that Plaintiff was taken to a
22 hospital, admit that while there he denied any memory of the events at the UPS Freight
23 yard, admit that he apologized to Officer Frank, admitted to using "bad" crystal meth, admit
24 that the only treatment consisted of a topical antibacterial lotion, and deny all else.

25 The Defendants deny Paragraph 4.14.
26
27

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VI. INJUNCTION ALLEGATIONS

In response to Paragraph 5.1, the police reports speak for themselves, and deny all else.

In response to Paragraph 5.2, the police reports speak for themselves and deny all else.

In response to Paragraph 5.3, it is the policy of the City to use objectively reasonable force, which can include pain compliance and pain distraction techniques, and deny all else.

VII. CAUSE OF ACTION

Defendants deny Paragraphs 6.1 and 6.2.

VIII. REQUEST FOR RELIEF

Defendants deny Paragraphs 7.1 – 7.12

BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSE, Defendant states and alleges as follows:

1. **INTENTIONAL CONDUCT, INTOXICATION, COMPARATIVE FAULT:** That the injuries and damages, if any, claimed by the Plaintiff were proximately caused or contributed to by the fault of Plaintiff.

2. **DISCRETIONARY IMMUNITY:** That all actions of the Defendant herein alleged as negligence, manifest a reasonable exercise of judgment and discretion by authorized public officials made in the exercise of governmental authority entrusted to them by law and are neither tortious nor actionable.

3. **STANDING:** That the Plaintiff lacks standing to sue. It is the Defendants position that standing is a jurisdictional element, for which Plaintiff bears the full burden of production and persuasion, and adds this affirmative defense out of abundance of caution.

4. **EXCUSE AND JUSTIFICATION:** That if the Plaintiff sustained any injury or damage, the same was the result of reasonable conduct and required conduct of the

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Defendants under the circumstances and was excusable and justifiable in connection with the arrest [and in connection with Plaintiff's obstruction of the officer and efforts to resist arrest].

5. **PROVOCATION:** That if the Plaintiff sustained any injury or damage, the same was provoked by the conduct of the Plaintiff.

6. **REASONABLE AND LAWFUL FORCE:** That any force utilized by the Defendants was reasonable, necessary and lawful under the circumstances.

7. **LAWFUL ARREST:** That the arrest of the Plaintiff was lawful.

8. **GOOD FAITH:** That the Defendant at all times acted in good faith in the performance of their duties and are therefore immune from suit for the matters charged in Plaintiff's complaint.

9. **MITIGATION OF DAMAGES:** That if the Plaintiff suffered any damages, recovery therefore is barred by Plaintiff's failure to mitigate said damages.

10. **QUALIFIED IMMUNITY:** Defendant contends that Plaintiff's claims are precluded by the doctrine of qualified immunity.

PRAYER FOR RELIEF

WHEREFORE, Defendant OFFICER BRENT FRANK, OFFICER MIKE BOEHMER, AND THE CITY OF TUKWILA, A MUNICIPAL CORPORATION prays for the following relief:

1. That Plaintiff's complaint be dismissed with prejudice, and that Plaintiff take nothing by his complaint:

2. That Defendant be allowed its statutory costs and reasonable attorney fees incurred herein; and

3. For such additional relief the Court may deem just and equitable

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JURY TRIAL DEMANDED

The Defendants respectfully demand their right to a trial by jury in this matter.

DATED this 12th day of April, 2016.

KEATING, BUCKLIN & McCORMACK,
INC., P.S.

By: /s/ Andrew Cooley
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**DEFENDANTS ANSWER TO AMENDED COMPLAINT
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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED: April 12, 2016

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**DEFENDANTS ANSWER TO AMENDED COMPLAINT
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